IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

Bail Appl..No. 4211 of 2007()

CRIME NO.319/07 OF TANUR POLICE STATION

PETITIONERS/ACCUSED NOS.1 TO 3

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1. MADHAVAN NAIR, AGED 83, S/O. ETTICHIRI AMMA, 'AYODHYA', PENGATTIRI, POST NELLAYA, PALAKKAD DISTRICT.

2. PADMINI, D/O. MADHAVAN NAIR, AGED 50 YEARS, RESIDING AT -DO- -DO-

3. SANKARANARAYANAN, AGED 54 YEARS, RESIDING AT -DO- -DO-

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, REPRESENTING SUB INSPECTOR OF POLICE, TANUR POLICE STATION.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NO. 4211 OF 2007

Dated this the 12th day of July, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 to 3. They face allegations, inter alia, under Sec.3 (i)(iv) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent and anticipatory bail may be granted to them.

3. The learned Public Prosecutor opposes the application. He contends that in the light of Sec.18 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act anticipatory bail cannot and may not be granted to the petitioners.

4. In view of the bar under Sec.18 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, I find

merit in the objections raised by the learned Public Prosecutor. A contention is strenuously raised that the allegations, even if accepted, may not amount to an offence under Sec.3(i)(iv) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. I need only say that prima facie I am not satisfied that the argument is sufficient to get over the bar under Sec.18 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act.

5. I am of opinion that the petitioners must appear before the learned Magistrate and seek regular bail. They can raise all their contentions before the learned Magistrate. It is by now trite and this Court had repeated the said proposition in the decisions reported in **Ali v. State of Kerala (**2000 (2) K.L.T. 280); **Shanu v. State of Kerala** (2000 (3) K.L.T. 452); **Krishnakumar v. State of Kerala** (2005 (1) K.L.D. (Cri) 42 and **P.P. Kader v. State of Kerala** (2005 (1) K.L.D. (Cri) 250) that notwithstanding the fact that the offences are triable by a Court of Session, the Magistrate is obliged to consider the application for bail on merits.

6. I am satisfied that the interests of justice will be served eminently by issue of a direction to the learned Magistrate to consider the applications for regular bail to be filed by the

petitioners on their surrender before the learned Magistrate – of course, after giving sufficient prior notice to the Prosecutor-in-charge of the case, expeditiously – on the date of surrender itself and in the light of the decisions referred above.

7. This Crl.M.C. is, in these circumstances, dismissed with the above specific observations.

8. Hand over a copy of this order to the learned counsel for the petitioners.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge